IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

TUESDAY, THE 9TH JANUARY 2007 / 19TH PAUSHA 1928

OP.No. 5646 of 1999(V)

PETITIONER:

THE COCHIN CO- OPERATIVE HOSPITAL SOCIETY LTD.,
NO.E 288, REP.BY ITS SECRETARY,
GANDHI NAGAR, ERNAKULAM.

BY ADV. SRI.ELVIN PETER P.J.
SRI.BIJOY CHANDRAN

RESPONDENTS:
----

1. **THE SECRETARY TO GOVERNMENT,**
   CO- OPERATIVE DEPARTMENT,
   SECRETARIATE , TRIVANDRUM.

2. **THE SECRETARY TO GOVERNMENT, LABOUR DEPARTMENT,**
   SECRETARIATE, TRIVANDRUM.

3. **THE JOINT REGISTRAR OF CO- OPERATIVE SOCIETIES,**
   ERNAKULAM.

4. **SRI.ELDHO PAUL, KAITHAKUDIYIL HOUSE,**
   IRAPURAM, PERUMBAVOOR, ERNAKULAM.

BY ADV. SRI.RAJESH NAIR
GOVERNMENT PLEADER SRI.SURARSHAN

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 09/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON CMP. NO. 9610/1999 IN OP. NO.5646/1999

DISMISSED

9.1.2007 **SD/- S.SIRI JAGAN, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1:- COPY OF THE ORDER DT.17TH MAY, 1995 ISSUED BY THE SOCIETY.

EXT.P2:- COPY OF THE CIRCULAR NO. EM (2) 25846/90 DT.7.6.91 ISSUED BY THE REGISTRAR OF CO-OP. SOCIETY.

E.XT.P3:- COPY OF THE MEMO NO.IGCH/96-97 DT.7TH APRIL, 1997 ISSUED BY THE HOSPITAL.

EXT.P4:- COPY OF THE ORDER DT. 27TH MAY, 1997 ISSUED BY THE HOSPITAL.

EXT.P5:- COPY OF THE ORDER, G.O.(Rt) NO.173/98/CO-OP DT. 4.5.98.

E.XT.P6:- COPY OF THE ORDER G.O.(Rt) NO. 3574/98/LBR, DT.12.11.98.

/TRUE COPY/

tss

S. SIRI JAGAN, J.

O.P. No. 5646 OF 1999 V

Dated this the 9th day of January, 2007

J U D G M E N T

The petitioner is the Cochin Co-operative Hospital Society Limited. The Society was under the management of Administrators appointed under section 32 of the Kerala Co-operative Societies Act, 1969 for some period. During the said period, the administrators made certain appointments to different posts in the Society as per order dated 17.5.1995. According to the petitioner, these appointments were not after complying with the procedure prescribed as per various Government Orders. The petitioner submits that by circular dated 7.6.1991, which is produced as Ext.P2, the Registrar has prescribed procedure to be followed in making appointments in Co-operative Societies. The petitioner alleges that the appointment of the 4th respondent was made in violation of the procedure prescribed in Ext.P2. After the elected Board of Directors assumed office, they took proceedings for termination of the service of these illegally appointed persons including the 4th respondent. Show cause notices were issued as evidenced by Ext.P3 to which the 4th respondent submitted explanation and ultimately by Ext.P4 order the services of the 4th

respondent were terminated. Against Ext.P4 order, the 4th respondent filed a petition dated 11.4.1997 before the Joint Registrar of Co-operative Societies, Ernakulam. By order dated 10.7.1997, the Joint Registrar dismissed the petition filed by the 4th respondent. Against that order, the 4th respondent filed an appeal dated 11.8.1997 under section 83(i)(j) of the Kerala Co-operative Societies Act before the 1st respondent, Government of Kerala. After hearing, the Government also dismissed the appeal filed by the 4th respondent by Ext.P5 order. Challenging Ext.P5 order, the petitioner filed OP.No.12317/98. While that original petition was pending, the 4th respondent filed a petition before the Assistant Labour Officer under the Industrial Disputes Act. The conciliation efforts initiated by the Assistant Labour Officer having failed the matter was placed before the Government who by Ext.P6 order referred an industrial dispute on the issue as to whether termination of the 4th respondent by the petitioner is justifiable. The said Ext.P6 order is under challenge in this original petition.

2. I have heard the learned counsel for the petitioner as also the learned Government Pleader and the learned counsel for the 4th respondent.

3. The learned counsel for the 4th respondent now admits that OP No.12317/98 filed by the 4th respondent against the termination of his services has also been dismissed and the same has become final.

The learned counsel for the petitioner would submit that once the 4th respondent has chosen to take recourse to the remedies provided to him under the Co-operative Societies Act when the same ended against him he cannot later raise an ID on the same question. On the other hand, the learned counsel for the 4th respondent submits that the scope of proceedings under the Co-operative Societies Act and under the Industrial Disputes Act are different and the Labour court or the Industrial Tribunal has wider powers in exercise of their jurisdiction under the I.D. Act and, therefore, even if the petitioner's appeal has been dismissed against him, he is not precluded from raising an ID.

4. I have considered the rival arguments.

5. I am of the opinion that I need not go into these questions at all for the reasons stated below. Admittedly, the 4th respondent's services were terminated only because his appointment was per se illegal since the same was made in violation of the procedure prescribed by the Registrar of Co-operative Societies. The question as to whether the 4th respondent's appointment was illegal was taken up further by the petitioner, which has been decided against him by the Government. In OP No.12317/98 field by the 4th respondent this court has also upheld the findings of the Society, Joint Registrar and the Government holding that the 4th respondent's appointment was illegal. That being so, the issue as to whether the 4th respondent's appointment was legal or not

has been concluded against him and the Labour court even if the ID can be stated to be maintainable which itself is in considerable doubt cannot enter a finding contrary to the decision of this court in OP No.12317/98. Therefore, I am satisfied that the petitioner is entitled to succeed in this original petition. Accordingly Ext.P6 is quashed and it is declared that the reference has become infructuous in view of the specific finding of this court in the above said original petition to the effect that the 4th respondent's termination from service is legal and valid. Since I have quashed Ext.P6 reference order itself, the Labour court cannot now proceed further in that ID, which has been stayed by this court as per order in CMP No.9610/99.

The original petition is disposed of as above.

(S. SIRI JAGAN, JUDGE)

aks

S. SIRI JAGAN , J.

OP No.5646/99 V

J U D G M E N T

9th January, 2007